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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,643	04/09/2004	Robert J. Medoff	U 015145-3	9009
140 7590 07/07/2009 LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023				
EXAMINER				
SWIGER III, JAMES L				
ART UNIT		PAPER NUMBER		
3775				
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07/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,643

Applicant(s)

MEDOFF, ROBERT J.

Examiner

JAMES L. SWIGER

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 and 54-62 is/are pending in the application.
4a) Of the above claim(s) 1-37 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 38-45 and 58-62 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 4/9/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claims 38 and 44 are objected to because of the following informalities: In line 9, the "proximity" appears that it should be spelled --proximity--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-39, 41-45, and 58-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medoff (US Patent 5,709,682) in view of Laboreau et al. (US Patent 5,662,655). Medoff discloses an implant comprising a single wire having a U-shaped bend (for example top view Fig. 2) defining a first region, with opposite legs extending from the U-shaped bend and are parallel, wherein said legs have distal ends (49) that are bent away (also, 5) and are capable of buttressing a surface of a bone (see Fig. 3). This portion of the legs comprise a second portion, aside from a first portion (approx, 41, which lies in the same plane as the U-shaped bend), wherein the second portion lies outside the first plane of the first portion. The legs are considered parallel to one another and the legs are of equal length in the view of Fig. 2. Medoff also discloses a pin in combination with a washer (6, Fig. 6) which can assist in holding the pin legs in relation to another, or alternatively, assist in holding or securing the pin to a bone (with

an alternative pin 4). The implant of Medoff further disclose a bent portion (approx 41) that connects the two portions out of plane.

Medoff discloses the claimed invention except for a region extending from the U-shaped bend which is a second region in proximity to the distal end, in which the spacing of the legs is different, or wherein the length of the legs in the distal region is unequal. Laboreau discloses a single piece implant device (see Fig. 2) that has two regions, one in proximity of the U-shaped bend, and a second region in proximity to the second region, and also has legs of different lengths (13/14) due to the various adjustments from the first regions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Medoff having at least a region extending from the U-shaped bend which is a second region in proximity to the distal end, in which the spacing of the legs is different, or wherein the length of the legs in the distal region is unequal in view of Laboreau so that the device can be better fit and be secured to, differing sizes and shapes of bone so that adequate support can be provided for recovery.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Medoff in view of Laboreau as applied to claim 39 above, and further in view of Gasper (US Patent 1,315,926). The combination of Medoff in view of Laboreau disclose the claimed invention except for at least one of the legs is bent outwardly in a direction away from the other leg. Gasper shows a single wire fixation device that utilizes a bend in a direction away from another (at least a portion of) leg at a region (4). This region defines a shoulder which helps to rest against the area to be fixed, and

helps to prevent undue movement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the combination of Medoff in view of Laboreau having at least a region extending outwardly in view of Gasper to enable better fixation relative to varying patent/bone geometry.

Response to Arguments

Applicant's arguments submitted 4/2/2009 have been fully considered but are moot in view of the new grounds of rejection. Applicant's claim amendments have been considered however it is still held that the claimed invention reads on the prior art of record. Rejections of the instant claims are found above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES L. SWIGER whose telephone number is (571)272-5557. The examiner can normally be reached on M-F 9-530.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L. SWIGER/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775